IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 176 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MRUGESH KANUBHAI VYAS - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
MR IM PANDYA, A.P.P. for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date :-04/02/2006

CAV JUDGMENT

1. Appellant – convict has preferred this appeal under Sec.374(2) of Code of Criminal Procedure,

1973 challenging judgment and order passed by the learned Special Judge, Court No.2, Ahmedabad on 31st January 1992 in Special Case No.16 of 1989 convicting him for the offence punishable under Sec.161 of Indian Penal Code and under Section 5 (1) (d) and 5 (2) of the Prevention of Corruption Act and sentencing him to undergo simple imprisonment of two years and fine of Rs.1,500/- in default to undergo further simple imprisonment of three months u/s 161 of the Code of Criminal Procedure and simple imprisonment of two years and fine of Rs.1,500/- and in default simple imprisonment of three months under Section 5 (1) (d) and 5 (2) of the Prevention of Corruption Act. The learned Special Judge has directed that the substantive sentences shall run concurrently.

2. The brief facts of the prosecution case are that on 4.8.1988, the complainant Jivanlal Mohanlal Bariya lodged a complaint before Anti Corruption Bureau (hereinafter referred to as 'A.C.B.' for short) at Ahmedabad that the appellant, who was a Bailiff of the City Civil Court and a Government servant, demanded Rs.10/- and accepted on 3-8-1988 and further demanded Rs.25/- as illegal gratification for serving the notice of 'Jangam' warrant for realisation of the

awarded amount granted in favour of his son in a Motor Accident Claim Case on the Insurance Company. Thereupon, a trap was laid in presence of two Panchas on 4.3.1988 and it is the case of the prosecution that the appellant was caught red handed while accepting the illegal gratification in the sum of Rs.25/- from the complainant. On the basis of the complaint, investigation was undertaken. Requisite sanction for prosecution of appellant was obtained. On completion of the investigation, charge-sheet came to be filed against the appellant. Learned Special Judge framed charges against the appellant who denied having committed the offence and demanded trial. Therefore, the prosecution adduced documentary as well as oral evidence. At the end of prosecution evidence, incriminating circumstances were explained to the appellant and his further statement was recorded as required under Sec.313 of Code of Criminal Procedure, 1973. The defence of the appellant was that a false case was made out against him by the complainant. The appellant examined two witnesses in order to prove his defence. After closure of evidence, learned Additional Public Prosecutor and learned advocate for the appellant were heard. At the end of trial, the learned Special Judge found appellant guilty for the aforesaid

offences and imposed the punishment noticed earlier.. The present appeal is against the judgment and order of sentence passed by the learned Special Judge.

3. Learned senior advocate Mr. Shethna for the appellant submitted that the learned Special Judge has committed error in convicting the appellant, as the appellant was not assigned the work of serving notice to the Insurance Company and the said work was assigned to some other Bailiff. According to the learned advocate Mr. Shethna the appellant never demanded illegal gratification for the service of notice. It was contended that the other employees of the Court had sent affidavits to the Investigating Officer narrating certain facts, but Investigating Officer did not carry out investigation in that regard. He also submitted that the investigation was carried out with a specific object to implicate the appellant. According to him, the prosecution has not proved the case beyond reasonable doubt and therefore the appellant should be acquitted.

4. Learned Additional Public Prosecutor Mr. I.M. Pandya has submitted that the prosecution has proved the case beyond reasonable doubt. It is

submitted that the Investigating Officer is not bound to carry out the investigation in the manner suggested by the appellant and it cannot be branded as lope sided. If the appellant-convict was relying upon the evidence of employees who had filed affidavits, he could have examined them as witnesses and therefore, no interference is warranted in the judgment.

5. The cardinal principle of Criminal Jurisprudence is that every criminal matter has to be decided on broad and reasonable probabilities arising from the facts of the case. The first question which requires determination is that whether demand of Rs.10/- and payment of the same by the complainant to the appellant on 3.8.1988 is proved ? It deserves to be noticed that the complainant was serving as Class – IV employee in anti corruption Bureau since twenty two years and therefore, it is reasonable to presume that he was well conversant with the fact that the function of his office was to arrange raid when complaint regarding demand of bribe was received by his office. It is also reasonable to presume that as he was discharging his duties in A.C.B. Office itself he must be knowing higher officers discharging duties in his office and must have good relations with those officers.

However, during his cross-examination, the complainant has admitted that he had neither informed his lawyer Mr.M.U. Desai nor any of the officers discharging duties in his office or for that matter to any one at all that on 3.8.1988, the appellant had demanded Rs.10/- from him as bribe and that he had paid the said amount to the appellant. If in fact, the appellant had demanded Rs.10/- as bribe from the complainant and the complainant had paid the said amount to the appellant, the complainant would not have failed to mention said fact either to his higher officer or to his lawyer or to his wife etc. But, it is an admitted position that the complainant had not mentioned very important fact to any one. The admission made by complainant that he had not mentioned this most relevant fact to any one is to be found in paragraph 5 of his testimony which is part of his cross examination. The question posed earlier for determination will have to be determined in the light of another significant fact that the complainant has little regard for truth. In his examination-in-chief, the complainant has stated that presence of Anthrancene Power on joints of fingers of the appellant was found when his hands were examined with the help of ultra violet lamp. However, in cross-examination, he had to admit that no

Anthracene Power was found on joints of fingers of the appellant when his hands were examined with the help of ultra violet lamp. Again, it is an admitted position that at the time of raid, another bailiff i.e. Bhupatsinh Champavat was present in the room where raid was carried out. This Champavat was residing in Government Servant's Colony known as 'Dus Bungalow” situated at Gulbai Tekra, Ahmedabad. His Quarter number was F/20. The complainant was also alloted quarter in the said colony as he was serving in A.C.B. office and his quarter Number was D/6. Quarter No.F/20 occupied by bailiff Champavat is quite opposite Quarter No.D/6 Occupied by the complainant and naturally therefore, the complainant must be well knowing bailiff Champavat. However, in his cross-examination, the complainant empathetically maintained before the Court that he was not knowing bailiff Champavat at all. This assertion prompted the cross-examiner to put further questions to the complainant and ultimately the complainant had to hesitantly admit that he was knowing bailiff Champavat as he was also attending prayer songs arranged in the colony. This discussion makes clear that the complainant has no regard for the truth and can go to any extent to suit his purpose. On review of evidence of the

complainant, I am of the opinion that demand and acceptance of Rs.10/- on 3.8.1988 by the appellant is not proved and therefore, the whole prosecution case is liable to be disbelieved.

6. Coming to the main incident of demand and acceptance of bribe amount of Rs.25/- on 4.8.1988, I find from the record that the appellant had served notice on the owner of the vehicle on 3.8.1988 in the execution proceedings initiated by the judgment creditor i.e. son of the complainant. It is an admitted position that it was not within the domain of the appellant to serve the Insurance Company concerned and it was the duty of another bailiff Mr.Khan to serve the Insurance Company. The complainant has not stated in his evidence that his relations with bailiff Champavat were strained or that Champavat was on inimical terms with him. Naturally, therefore, complainant must have contacted bailiff Champavat who was staying opposite his quarter and must have learnt from Champavat that it was duty of bailiff Khan to serve the Insurance Company and the appellant was not concerned at all in the matter of effecting service on the Insurance Company. It is not the case of the prosecution that the appellant had demanded amount of bribe and accepted the same on

behalf of bailiff Khan. In the light of this very important circumstance, the statements made by the Panch witness in his cross-examination will have to be considered. The Panch witness i.e. Jasvantlal Chauhan in paragraph no.2 of his testimony stated that it is true that it was not stated by the appellant that anthracene power was noticed on his hand. It is further stated by the Panch that the appellant was not asked to see the shine emitting from the light of ultra violate lamp. According to the Panch, the appellant was not asked to see the things in the light of the ultra violate lamp. The evidence of Panch shows that other bailiffs were also sitting in the room and the Panch has admitted that others who were present in the room were also not asked to witness the experiment carried out with the help of ultra violate lamp nor were they interrogated. Above mentioned statements made by the Panch witness creates a doubt whether any experiment with ultra violate lamp was in fact, carried out ! The Panch has further stated in paragraph no.2 of his deposition that the appellant had informed the complainant that notice of proceedings was served on the owner and that notice to be served on the Insurance Company was given to bailiff Khan for service. If this is so, then there was no occasion for the appellant to

demand bribe money from the complainant or to accept the same from him nor there was any occasion for the complainant to give the amount to the appellant. The Panch has stated in his evidence that as soon as the appellant had informed the complainant that notice to be served on Insurance Company was given to bailiff Khan, the complainant had taken out the money from his pocket. This statement shows that the bribe amount was not demanded by the appellant and the amount was thrust upon him. It is important to note that several other persons including Panch who was unknown to the appellant were present in the room at the time of alleged demand and acceptance of bribe. As explained by the Hon'ble Supreme Court in ***G.V. Nanjundiah Vs. State (Delhi Administration)*** reported in ***AIR 1987 SC 2402,*** a public servant would not accept bribe in presence of strangers and others. The record shows that other bailiffs were also present in the room. They were (i) Chandrakant Bhikhaji Padiyar (ii) Dinesh Bansilal Bhatt (iii) Chandrakant Dasrathbhai Joshi (iv) Savnathsinh K. Champavat (v) L.G. Chaudhari. The statements of the bailiffs were recorded and they were cited as witnesses in the chargesheet but were not examined as witnesses. The above mentioned bailiffs had filed affidavits on 6.8.1988

narrating the incident. The defence witnesses have also stated that their police statements were not recorded as stated by them. In these circumstances, defence evidence of Bhupatsinh I. Champavat and C.B. Padhiyar becomes relevant. To say the least investigation can hardly be termed as impartial. They have categorically stated that a false case was foisted upon the appellant. On re-appreciation of evidence, I am of the opinion that the prosecution has failed to prove its case beyond reasonable doubt and the appellant is entitled to reasonable benefit of doubt arising from the facts of the case.

7. For the foregoing reasons, the appeal is allowed and the judgment dated 31.01.1992 passed by the learned Special Judge, Court No.2, Ahmedabad convicting the appellant under Sec. 161 of Indian Penal Code and Sec.5(1)(d) and 5(2) of Prevention of Corruption Act and sentencing him to undergo simple imprisonment for two years and fine of Rs.1,500/- on each count is hereby set aside. Fine be refunded to the appellant. Bail bonds are cancelled and sureties are discharged. Muddamal be disposed of as directed by the learned Special Judge in the impugned judgment.

[BANKIM N. MEHTA, J.]

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